

Testimony of Daniel T. Griswold  
Cato Institute

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Mr. Chairman and members of the Subcommittee, thank you for inviting the Cato Institute to testify today on the need to reform America's immigration law. Those laws are colliding with reality, and reality is winning. Today an estimated 8 million people live in the United States without legal documents, and each year the number grows by an estimated 350,000 as more enter illegally or overstay their visas. More than half of the illegal immigrants entering and already here come from Mexico.

When President Bush and President Fox of Mexico met in Washington on September 7, 2001, they "renewed their commitment to forging new and realistic approaches to migration to ensure it is safe, orderly, legal and dignified." More than two years later, our immigration system remains unsafe, disorderly, illegal, and undignified.

Since 1986, the U.S. government has labored in vain to stem the inflow of illegal immigrants. The 1986 Immigration Reform and Control Act (IRCA) required U.S. companies to check documentation of all prospective employees and, for the first time in American history, authorized fines against firms that knowingly hire illegal immigrants. To cut off the supply of unauthorized workers, it dramatically increased spending on the Border Patrol, and to address the problem of the millions of illegal aliens already in the United States, it granted permanent legal status, or "amnesty," to 2.8 million unauthorized immigrants who had been in the country continuously since January 1, 1982. The Clinton administration tried to stem the rising tide through enhanced border enforcement in a policy it dubbed "prevention through deterrence." And in 1996, the Illegal Immigration Reform and Immigrant Responsibility Act further ramped up resources for border control, including funds for additional layers of fencing in San Diego, and imposed tougher penalties on smugglers, undocumented workers, and those who overstay their visas.

By any real measure of results, the effort since 1986 to constrict illegal immigration has failed. The number of undocumented immigrants in the United States today has doubled since then, from an estimated 4 million to 8 million, with the undocumented population growing by more than 300,000 a year. The length of the U.S.-Mexican border and the volume of legal border crossings virtually guarantee that current U.S. border control policy will fail. Moreover, the U.S. government's expensive and coercive efforts to curb Mexican migration have caused a number of perverse and unintended consequences.

## **Why Mexicans Migrate North**

To understand why U.S. border policy has failed, we must first understand why Mexican workers migrate despite the U.S. government's expensive campaign to keep them out. Mexican migration is a complex process driven by factors other than the mere difference in wages between the two countries. Other factors, such as risk diversification and social networks, weigh more heavily in the decision to migrate than a simple calculation of the cost of migrating versus the benefits of earning a higher wage.

Workers from less developed countries immigrate to wealthier countries to diversify risk and gain access to capital. Poor countries such as Mexico typically have underdeveloped insurance and capital markets. To protect themselves from downturns in their own economy, families will send a worker to a more advanced market to send back remittances—cash transfers sent across international borders. The remittances are also a ready source of capital in markets where families cannot easily obtain bank loans and other forms of commercial credit. Remittances can provide investment funds to improve housing, pay medical bills, and finance community improvements.

Most Mexicans who migrate to the United States do not come intending to settle permanently. They come to solve temporary problems of family finance—by saving dollars and sending them back home in the form of remittances. Their goal is to rejoin their families and communities after a few months or years as sojourners in the U.S. labor market. From the end of the *Bracero* program in 1964 until the passage of the IRCA in 1986—a period during which Mexicans were practically if not legally free to cross the border and work—the flow of labor was largely circular. Douglas Massey of the University of Pennsylvania estimates that, during that period, 28 million Mexicans entered the United States and 23.4 million eventually returned to Mexico, for a net immigration total of 4.6 million. In other words, when free to enter and work in the United States, more than 80 percent of Mexican migrants still chose eventually to return to their homeland. “Given the relatively porous border” during that period, Massey concludes, “migrants knew that they could return to the United States for additional labor whenever the need arose, thus encouraging a pattern of circular rather than settled migration.”

Finally, immigration is driven by demand for labor in the U.S. market. Mexicans migrate to the United States not simply because wages are higher but because Americans want to hire them. Drawing on their social capital, migrants commonly enter the U.S. labor market after learning that specific jobs are available in specific locations. For a Mexican worker, being unemployed or underemployed is far more expensive in the United States than back in Mexico. If jobs are not available for migrants in the United States, a journey north of the border will be far less attractive no matter what the wage differential. If jobs are available, current U.S. border policy will not keep them out.

## **America's Underground Labor Market**

While it has failed to stop the flow of workers, the U.S. government's campaign against economic migration from Mexico has spawned an underworld of smuggling, document fraud, and other criminal activity. To make the difficult crossing through unfamiliar territory, migrants have been forced to hire the services of smuggling

networks or of individual guides known as “coyotes.” As a direct consequence of the government’s “prevention through deterrence” campaign, the share of illegal immigrants who use smugglers to enter from Mexico increased from 70 percent in the early 1990s to nearly 90 percent by the end of the decade. Fees that coyotes charge also increased during that period, from an estimated average of \$500 to \$1,500 today. And to circumvent employer sanctions once in the United States, undocumented migrants are supplied with false documents by a well-developed underground cottage industry.

By raising the cost and risk of crossing the border, the decade-and-a-half campaign to suppress Mexican migration has backfired by making it more likely that Mexican migrants, once in the United States, will stay longer before undertaking another round trip across the border. Once in the United States, illegal Mexican workers must remain longer to pay the higher cost of crossing the border, and they are reluctant to repeat the increasingly costly and dangerous trip more often than necessary. Yet the cost of crossing the border remains low enough that hundreds of thousands of Mexicans succeed in entering the United States illegally each year. Those who do are staying longer and adding to the stock of Mexican migrants already in the country. Before passage of the IRCA in 1986, the median stay in the United States of undocumented migrants from Mexico was 2.6 years; by 1998, after the border crackdown of the Clinton years, the median stay had risen to 6.6 years. A U.S. border policy aimed at reducing illegal immigration to the United States has perversely encouraged illegal immigrants to stay.

Another consequence of the suppression policy has been to divert migration flows from a few traditional, urban crossing points to more scattered rural areas—to the frustration of rural residents and the peril of migrants. Up until the mid-1980s, the large majority of Mexican migrants entered the United States via three narrow, urban gates—San Diego, California, and El Paso and Laredo, Texas. In response to enhanced border enforcement in those cities, migration patterns shifted to remote rural areas such as the Arizona-Mexico border where patrols are more scattered but conditions are also more dangerous. The diverted flow has caused headaches for Americans living in those areas as migrants have trespassed on private property, disturbed livestock, and destroyed property. The remote topography and hostile desert climate have also resulted in the deaths of thousands of migrants since the crackdown began. In 2001, 336 migrants were found dead along the border from dehydration and other causes, down slightly from 377 deaths in 2000, but up sharply from the death toll in earlier years.

Employer sanctions have artificially depressed wages of undocumented workers by reducing their bargaining power and complicating the task of hiring them. Sanctions have increased the paperwork for business and encouraged hiring through subcontractors and off-the-books cash payments. A Labor Department study on the effect of employer sanctions contained in the 1986 IRCA bill concluded that “employer sanctions are viewed as a tax on the employment of unauthorized workers and are incorporated directly into the labor demand schedule of the firms. As a result, the direct effect of employer sanctions is to lower wages.”

Because of their status, undocumented workers are less able to bargain individually with employers for a full market wage. Through the use of false documents, many illegal immigrants do find work with major employers who offer competitive market wages and benefits, but others can only find work in the secondary market where they are more likely to be paid in cash or hired through subcontractors willing to assume

the risk. The result is sub-market wages and sub-market working conditions for undocumented workers and for documented workers who compete with them in the labor market. As a result, sanctions have acted as a kind of tax on low-skilled workers in the United States, whether immigrant or native.

Furthermore, by diverting millions of Mexican workers into an underground labor economy, U.S. immigration law has discouraged those workers from investing in their human capital and has exposed them to substandard treatment by employers. Workers without legal documents have limited incentives to learn new skills because of the lingering threat of deportation and the uncertainty that causes.

Beyond economics, America's prohibition of low-skilled immigrant labor indirectly threatens the civil liberties of all Americans, native and immigrant alike. To address the failures of the employer sanctions system, critics of immigration have proposed a national identification card that would supposedly safeguard against fraud. A national ID card, however, is fraught with potential dangers to civil liberties. It could be used by the government to gather information on citizens that may have nothing to do with employment documentation. It could easily become, in the words of Cato scholar Adam Thierer, "a domestic passport that citizens are required to produce for the most routine daily tasks."

A related proposal would be to create a centralized government database of legally qualified workers. Before hiring an individual, the employer would be required to verify that the worker is listed in the computerized database as being authorized to work in the United States. An American citizen's ability to work and support his or her family would be dependent upon the worker's file being accessible in a computerized government database—a database vulnerable to hackers, human error, technical failure, and governmental abuse. In pursuit of a questionable policy, Americans would be forced to surrender an important aspect of their freedom.

### **Benefits of an Open, Integrated Labor Market**

The migration of Mexican workers to the United States is a rational and mutually beneficial response to underlying economic needs on both sides of the border. Immigration, like the international flow of goods, services, and capital, typically benefits most people in both the sending and receiving countries.

Immigration benefits the U.S. economy by providing workers to fill gaps in the labor market. Immigrants tend to be disproportionately represented in occupations where the gap between the supply of workers and the demand for them is greatest, typically in the highest-skilled and lowest-skilled jobs. That hourglass shape of the immigration labor pool complements the native workforce, where a much larger share of workers falls in the middle range in terms of skills and education. As a result, immigrants do not typically compete for the kinds of jobs held by the vast majority of American workers. Instead, immigrants migrate to those segments of the job market where most Americans are either over- or under-qualified.

Immigration provides a safety valve for the U.S. labor market, allowing the supply of workers to increase relatively quickly to meet rising demand. In a closed domestic market, the size of the labor force is relatively fixed in the short run. Immigration allows new workers to enter the labor force rapidly to fill a variety of

positions in response to rising demand for labor. When demand falls, would-be immigrants can decide not to enter, and those already here can decide to return home. The result is a more efficient economy that can achieve a higher rate of sustainable growth without encountering bottlenecks or stoking inflationary pressures.

America's recent history confirms that our economy can prosper during times of robust immigration. During the long boom of the 1990s, and especially in the second half of the decade, the national unemployment rate fell below 4 percent and real wages rose up and down the income scale during a time of high immigration levels. According to a study by the Council of Economic Advisers, household incomes rose strongly from 1993 through 1999 across all income groups, including the poorest one-fifth of American households. America's poverty rate fell by three percentage points during the 1990s, and almost 10 percentage points among African Americans. Those remarkable gains occurred during a decade of large immigration inflows, including low-skilled immigrants from Mexico.

Low-skilled immigrants, a category that describes most migrants from Mexico, benefit the U.S. economy by filling jobs for which the large majority of American workers are overqualified and that they're unwilling to fill. Important sectors of the U.S. economy have turned to low-skilled immigrant workers, documented and undocumented, to fill persistent job vacancies. Hotels and motels, restaurants, construction, manufacturing, health care, retailing, and other services are major employers of low-skilled immigrant labor.

The demand for less-skilled labor will continue to grow in the years ahead. According to the Department of Labor, while the fastest-growing occupations in the next decade in percentage terms will require high degrees of skill and education, the largest growth in absolute numbers will be in those categories that require only "short-term on-the-job training" of one month or less. In fact, of the top 30 categories with the largest expected job growth between 2000 and 2010, more than half fall into that least-skilled category. Those categories include: combined food preparation and servicing workers, including fast food; waiters and waitresses; retail salespersons; cashiers; security guards; nursing aides, orderlies, and attendants; janitors and cleaners; home health aides; manual laborers and freight, stock, and materials movers; landscaping and grounds keeping workers; and manual packers and packagers—all occupations where low-skilled immigrants from Mexico can be expected to help meet the rising demand for workers. Across the U.S. economy, the Labor Department estimates that the total number of jobs requiring only short-term training will increase from 53.2 million in 2000 to 60.9 million by 2010, a net increase of 7.7 million jobs.

Meanwhile, the supply of American workers suitable for such work continues to fall because of an aging workforce and rising education levels. The median age of American workers continues to increase as the large cohort of Baby Boomers approaches retirement age. From 1990 to 2010, the median age of U.S. workers is expected to increase from 36.6 years old to 40.6. Younger and older workers alike are now more educated as the share of adult native-born men without a high school diploma has plunged, from 53.6 percent in 1960 to 9.0 percent in 1998. During that same period, the share with college degrees has gone up from 11.4 percent to 29.8 percent.

With the number of low-skilled jobs expected to grow by more than 700,000 a year, and a shrinking pool of Americans willing to fill those jobs, Mexican migrants

provide a ready and willing source of labor to fill the growing gap between demand and supply on the lower rungs of the labor ladder.

Legalization of undocumented workers would restore the normal incentive for them to upgrade their skills and would increase their bargaining power with employers. As evidence, a 1995 Labor Department study found that undocumented workers who were legalized in the 1980s as part of the IRCA “amnesty” provisions responded by investing in their skills and education. “For many, legalization appears to have been a turning point. Suddenly, there was a surge of investment in language skills, education, and training,” the study found. Specifically, 43 percent of Mexican men undertook some kind of skill enhancement training following legalization, “more than a doubling of the previous rate of human-capital accumulation for most origin groups.”

Another beneficial consequence was an increase in wages paid to newly legalized workers. The same study found that real wages paid to undocumented workers were flat for most of the decade until 1987–88, but then rose 15 percent in the five years following legalization. Legalization put previously undocumented workers on an equal footing with documented workers, allowing them to more credibly withhold their labor or consider other job offers instead of forcing them to accept what a limited group of employers were offering. Legalization eliminated the need for off-the-books payments, middlemen, and other subterfuges that had acted as a tax on their labor.

A final benefit of legalized immigration would be the almost certain reduction of illegal immigration. If a wide enough channel were opened so that the supply of workers from Mexico could be legally matched with the demand for their labor in the United States, the rationale for the current illegal flow of Mexican migrants would vanish. Why would Mexican workers bear the cost and risk of sneaking across the border, and then pay a tax on their wages and working conditions for their undocumented status, when they could instead enter the country and work legally? The experience of the *Bracero* program demonstrates that workers prefer the legal channel. Faced with large-scale illegal immigration in the early 1950s, the Immigration and Naturalization Service more than doubled the number of *Bracero* visas, enough to meet growing demand, especially in the agricultural sector. The result: Illegal immigration from Mexico plummeted to almost nothing during the second half of the decade. Illegal migration was supplanted by legal migration.

### **Concerns about Low-skilled Migration**

In the debate so far over Mexican migration, skeptics warn that legalizing Mexican migration will hurt low-skilled native-born Americans; burden taxpayers; reward lawbreaking; and compromise border security as we fight global terrorism. None of these concerns can be ignored, but each has to one degree or another been exaggerated or misunderstood, or can be addressed through the right policies. None of them, in the final analysis, outweighs the broad benefits of legalization.

One fear is that legal Mexican migration will hurt poor families by driving down wages for native-born American adults who lack a high school diploma. The impact of legalization on low-skilled American workers would be mitigated, however, if it were to encourage more circular migration rather than an increase in net migration. And because newly legalized immigrants would be able to exert more bargaining power in the labor

market, their own wages and those of competing low-skilled workers might actually increase after legalization, as they did after amnesty in the 1980s.

In fact, competition from immigrants actually gives native-born high school dropouts an even greater incentive to complete their education and enhance their skills. Competition from the last “Great Migration” of less-skilled immigrants a century ago was one of the major reasons for the dramatic increase in the high school graduation rate between 1910 and 1930, according to one study. As James P. Smith, chairman of the panel that authored the NRC report, told the Senate Immigration Subcommittee in 1997, “The competition created by immigration increases the likelihood that native-born Americans will stay in school rather than drop out. As we documented in the report, immigration increases the wages of native-born high school graduates relative to native-born high school dropouts. This bigger wage premium from completing high school gives native-born Americans an extra incentive to get their high school diploma. If young native-born Americans want to avoid competing with immigrant workers—my advice is simple—get your high school diploma.”

Long-time opponents of immigration have seized on September 11 to argue against legalization of Mexican migration, and in favor of drastic cuts in existing levels of legal immigration. But the connection between the September 11 attacks and illegal immigration from Mexico is tenuous. None of the 19 hijackers entered the country illegally or as immigrants. They all arrived in the United States with valid temporary nonimmigrant tourist or student visas. None of them arrived via Mexico. None of them were Mexican. Sealing the Mexican border with a three-tiered, 2,000-mile replica of the Berlin Wall patrolled by thousands of U.S. troops would not have kept a single September 11 terrorist out of the United States.

Members of Congress rightly understood, when they passed the Enhanced Border Security and Visa Entry Reform Act of 2002, that Mexican migration is not a threat to national security. Notably absent from the bill were any provisions rolling back levels of legal immigration or bolstering efforts to curb undocumented migration from Mexico. Indeed, legalizing and regularizing the movement of workers across the U.S.-Mexican border could enhance our national security by bringing much of the underground labor market into the open, encouraging newly documented workers to cooperate fully with law enforcement officials, and freeing resources for border security and the war on terrorism.

Legalization of Mexican migration would drain a large part of the underground swamp that facilitates illegal immigration. It would reduce the demand for fraudulent documents, which in turn would reduce the supply available for terrorists trying to operate surreptitiously inside the United States. It would encourage millions of currently undocumented workers to make themselves known to authorities by registering with the government, reducing cover for terrorists who manage to enter the country and overstay their visas.

Legalization would allow the government to devote more of its resources to keeping terrorists out of the country. Before September 11, the U.S. government had stationed more than four times as many border enforcement agents on the Mexican border as along the Canadian border, even though the Canadian border is more than twice as long and has been the preferred border of entry for Middle Easterners trying to enter the United States illegally. A system that allows Mexican workers to enter the United

States legally would free up thousands of government personnel and save an estimated \$3 billion a year—resources that would then be available to fight terrorism.

A final major concern about legalization is that it would reward law breaking. Critics argue that widespread violation of our duly enacted immigration statutes undermines the rule of law. Of course, laws should be obeyed, but laws should also be in fundamental harmony with how most people choose to live their daily lives. When large numbers of otherwise normal and law-abiding people routinely violate a law, it signals that the law itself may be flawed. To argue that illegal immigration is bad merely because it is illegal avoids the policy question of whether it should be illegal in the first place.

American history is replete with misguided laws that proved to be unenforceable and were finally abandoned—for example, 19th century rules against “extralegal” land settlement, Prohibition of alcohol in the 1920s and early 1930s, and the federally mandated 55 miles per hour speed limit. In each case, the government could have launched a massive and expensive effort to crack down on all the millions of people violating those laws, but instead Congress eventually changed the law to conform with reality.

In the 19th century, America’s frontier was settled largely by illegal squatters. In his recent book, *The Mystery of Capital*, economist Hernando de Soto describes how those so-called “extralegals” of their day began to farm, mine, and otherwise improve land to which they did not have strict legal title. After failed attempts by the authorities to destroy their cabins and evict them—in a misguided zeal to enforce unworkable property laws—federal and state officials finally relented, changed the laws, and issued legal titles based on improvements made to the property. As de Soto wisely concluded: “The law must be compatible with how people actually arrange their lives.”

In sum, the U.S. government should fix the problem of illegal Mexican immigration in the same way it fixed illegal speeding at 65 mph on American highways, illegal consumption of alcohol during Prohibition, and illegal settlement of the American frontier—by changing the law and making those inherently non-criminal activities legal.

### **Making Work Legal**

The realities of the North American labor market demand a system of legal, regulated migration that conforms to how millions of people on both sides of the border “actually arrange their lives.” A reformed immigration system must accomplish three broad goals: creating a legal channel for future workers to enter the United States, granting legal status for workers already here, and sharply reducing illegal immigration.

A temporary work visa should be created that would allow Mexican nationals to remain in the United States to work for a limited period. The visa could authorize work for a definite period, perhaps three years, and would be renewable for an additional limited period; would allow multiple entries for as long as the visa was valid; would allow complete mobility between employers and sectors of the U.S. economy; and would entitle the holder to “national treatment.”

Mobility is essential so that workers can exercise full freedom to change jobs to realize maximum pay and working conditions, under the theory that a worker’s best protection against below-market pay and working conditions is the ability to leave for a better offer. On an economy-wide scale, full mobility would allow the supply of labor to



shift between sectors to meet changing demand. The visa must also confer on the immigrant worker national treatment, that is, the same legal protections extended by law to native workers. That would ensure that temporary workers do not enjoy any unfair legal advantage or suffer any legal disadvantage compared to other workers.

Mobility and national treatment will protect immigrant workers from the real and perceived abuses of past “guest worker” programs that tied workers to specified employers. The fatal flaw of the *Bracero* program and other proposed “guest worker” programs is that they tie workers to specific employers and industries, making visa holders overly dependent on the good will of their employers. The best model for the program is not the current H2-A or H2-B visas, which tie workers to certain employers, but the standard employment authorization document known as Form I-688B, which is already issued to foreign-born residents entitled to work in the United States. Unlike the H2 programs, Form I-688B allows full mobility among employers and sectors.

A program should be created to allow undocumented workers already in the United States to earn legal status based on years of work and other productive behavior. Undocumented workers already in the United States should be issued temporary work visas provided they register with the government and do not pose a threat to our internal or national security. Those who have lived and worked in the United States for more than a certain period should be eligible to apply for permanent residence status and, ultimately, citizenship.

Legalizing undocumented workers already in the United States would not be another “amnesty” such as that granted by IRCA in the 1980s. Undocumented workers should not be granted automatic permanent residence status, and instead should be issued temporary worker visas, valid for a limited period only. They should be assessed a one-time fine of a significant but not prohibitive amount. To gain permanent residence status, they would then need to apply for permanent residency through existing channels. They would not receive preferential treatment but would be processed along with other legally qualified applicants for permanent residency.

## **Conclusion**

U.S. immigration law has been overwhelmed by economic reality. It has made lawbreakers out of millions of hard-working, otherwise law-abiding people, immigrant workers and native employers alike, whose only “crime” is a desire to work together in our market economy for mutual advantage.

Members of the committee and Congress have three basic options before them in confronting illegal immigration. We can muddle through with the status quo, leaving millions of workers and their families in the legal shadows, afraid to make themselves known to authorities, unable to realize the full benefits of their labor in the marketplace, and hesitant to return to their home country. The status quo mocks the rule of law by maintaining an immigration system in fundamental conflict with the laws of economics and the legitimate aspirations of millions of people.

Or we can crack down, once again, on illegal immigration. The federal government could build a 2,000-mile, three-tiered fence from San Diego to Brownsville and reassign or hire tens of thousands of agents to patrol it. It could deploy thousands of additional government agents internally to raid even more workplaces, fine employers,

and hunt down and deport the millions of undocumented workers living and working in the United States—no matter how long or deep their ties to work, family, and community. It could force every American citizen and noncitizen alike to carry a national ID card or register in a national database as a precondition to earning a living. But that option would impose a high cost in tax dollars, economic output, and freedom. It would divert resources from the national effort to combat terrorism, and, like similar efforts before, would likely fail.

Or we can recognize reality by fixing America's flawed immigration system so that it conforms to the realities of a free society and a free and efficient economy. A legalized system of Mexican migration would, in one stroke, bring a huge underground market into the open. It would allow American producers in important sectors of our economy to hire the workers they need to grow. It would raise wages and working conditions for millions of low-skilled workers and spur investment in human capital. It would free resources and personnel for the war on terrorism.

President Bush and leaders of both parties in Congress should return to the task of reforming America's dysfunctional immigration system into one that is economic, humane, and compatible with how Americans actually arrange their lives.